IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4613 of 2001

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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A D RAJAN & 1 - Petitioner(s)

Versus

J M BAXI & CO. - Respondent(s)

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Appearance :
MR TR MISHRA for Petitioner(s) : 1 - 2.
MR YATIN SONI for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 09/01/2006

ORAL JUDGMENT

1. This petition is directed against the order dated 12th December 2000 passed by the Labour Court, Jamnagar, in Recovery Application No.1120 of 1990 whereby the said application has been rejected.

2. The short facts of the case are that the petitioner no.1 and late Shri P.D. Dave (hereinafter referred to as

the petitioners) were working with the respondent. They were transferred from Janagar to Navlakhi/Porbandar without seeking prior permission and/or approval under section 33 of the Industrial Disputes Act, 1947. The petitioners, therefore, raised a dispute and during the pendency of the dispute the petitioners were suspended from service. Inquiry proceedings were initiated in which the petitioners did not participate and therefore the inquiry was conducted exparte and ultimately dismissed the petitioners. Since the petitioners were protected workmen, an application for permission was made by the respondent in the year 1983. The said application came to be rejected in the year 1987 on the ground that no subsistence allowance was paid during the suspension period and therefore the whole departmental inquiry held to be vitiated. The respondent thereafter paid 50% wages by way of subsistence allowance to the petitioners. The petitioners claimed 100% wages on the ground that the permission application has been rejected and the petitioners are entitled to 100% wages. The petitioners therefore filed Recovery Application No.1120 of 1990 which came to be rejected.

3. Mr. Mishra, learned counsel for the petitioner,

submitted that the Labour Court has erred in rejecting the application. He submitted that the Labour Court has erred in observing that the remaining 50% of wages cannot be claimed under section 33(c)(2) of the Act. According to him, the only question which is required to be determined is to decide the effect of permission application having been rejected and consequential results thereof. Mr. Mishra therefore submitted that the impugned order is required to be quashed and set aside.

4. Mr. Soni appearing for the respondent submitted that there was no adjudication in respect of the claim of the petitioners and therefore the Labour Court was justified in passing the award in question.

5. The petitioners herein have claimed full back wages for the suspension period from June 1983 to June 1987. It is true that the approval application has been rejected and the order of dismissal is technically set aside. However, in absence of adjudication and ascertaining the amount the Labour court cannot grant any amount to the petitioners in the application filed by the petitioners. I am of the view that the Labour Court has correctly observed that remaining 50% wages cannot be claimed

under section 33(C)(2) of the Act.

6. Learned counsel for the petitioner has relied upon a decision in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma, reported in 2002(2) SCC 244, wherein it is held that once the approval application is rejected the employee is entitled for the back wages. In the present case the petitioners were under suspension and the dispute is with regard to the said period and there is no dispute that after the dismissal application they are entitled to full wages. Under the circumstances the facts of the aforesaid case are entirely different from the facts of this case and therefore the said decision can be of no help to the petitioners.

7. In the premises aforesaid, I do not find any merits in the petition. This petition is, therefore rejected. Rule is discharged with no order as to costs. However, it is clarified that the petitioners will be entitled wages after the rejection of the approval application from June 1987.

[K.S. JHAVERI, J.]

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